

akerman

Rory J. McEvoy

Akerman LLP
1251 Avenue of the Americas
37th Floor
New York, NY 10020

D: 212 259 6480
T: 212 880 3800
F: 212 880 8965
DirF: 212 259 7195

February 12, 2024

VIA ECF

Hon. Pamela K. Chen
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: Weller v. Icahn School of Medicine at Mount Sinai et al.
Case No. 1:23-CV-04775 (PKC) (LB)**

Dear Judge Chen:

On behalf of our clients the Icahn School of Medicine at Mount Sinai, Mount Sinai Health System Inc., Mount Sinai Queens, Kathy Navid, M.D., Dennis Charney, M.D., and Clarissa Jones-Winter (collectively, "Defendants"), I write to oppose Dr. Weller's request to file an improper sur-reply in opposition to Defendants' motion to dismiss. Plaintiff's reliance on the recent decision in *Murray v. UBS Securities, LLC*, Index No. 22-660, 2024 WL 478566 (S. Ct. Feb. 8, 2024) to justify his request lacks any merit because that case deals primarily with whether there is a requirement to plead and prove retaliatory intent in whistleblower claims brought under Sarbanes-Oxley. Simply put, Defendants, in their motion to dismiss, do not argue that Plaintiff was required but failed to plead retaliatory intent. *See* Main Br. 13-14 and Reply Br. 8-9. Indeed, Defendants do not even mention retaliatory intent in either their main or reply memoranda of law. *Id.* Instead, Defendants argued that Plaintiff's retaliation claims should be dismissed because (i) there was no adverse action; and (ii) he could not have been retaliated against by having his pay docked because it is clear from the face of the Amended Complaint that no pay was actually docked. *Id.*

The Court should reject Plaintiff's completely meritless argument that the decision in *Murray* is somehow relevant to his case, and deny his request to file a sur-reply.

Respectfully Submitted,

/s/ Rory McEvoy
Rory J. McEvoy, Esq.

Hon. Pamela K. Chen

February 12, 2024

Page 2

cc: Alexander Weller, M.D. (via ECF)